CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3822

Heard in Calgary, Tuesday, 10 November 2009

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE

EX PARTE

DISPUTE:

The failure to comply with the workload allocation and board adjustments provisions of the Collective Agreement, causing irreparable harm to various employees.

UNION'S STATEMENT OF ISSUE:

The Collective Agreement contains various provisions clearly defining the methods by which road, yard and joint spareboards and pools are regulated. Given the implementation of extended run trains, there are also provisions defining workload allocation for terminals operating in an extended run environment.

Most of these provisions require the input and concurrence of the Local Chairman in the regulation of these boards and, where concurrence is not required, boards are to be adjusted "… to enable employees to earn the maximum miles."

The Union submits that the Company has refused to comply with these provisions by, inter alia: ignoring the input and advice of the Local Chairmen; unilaterally and arbitrarily establishing the number of people assigned to these boards over the objections of the Local Chairmen; unilaterally and arbitrarily adjusting boards on other than the assigned day; improperly assigning more people than required, irreparably impacting and limiting the earnings (and pension) of those people; and, improperly assigning work outside the parameters of the required workload allocation.

The Union has repeatedly raised these issue at all levels, to no avail. The Union submits that the Company has knowingly, blatantly, and indefensibly violated the Collective Agreement, including the long standing interpretations of such, in an egregious manner that has caused

irreparable harm to many employees. The Union has repeatedly brought these violations to the attention of the Company, only to be ignored. As such; the Union submits that remedy provisions of the Collective Agreement are applicable and mandated with respect to the Instant matter.

The Company has not responded to the Union's grievance.

FOR THE UNION:

(SGD.) R. A. HACKL
FOR: GENERAL CHAIRMAN

There appeared on behalf of the Company:

K. Morris	– Manager, Labour Relations, Edmonton
D. Brodie	– Manager, Labour Relations, Edmonton
R. Marrese	– Sr. Manager, Business Management Edmonton
C. Tytgat	– Assistant Superintendant, Calgary
P. Payne	– Manager, Labour Relations, Edmonton

And on behalf of the Union [among others]:

M. A. Church	– Counsel, Toronto
B. R. Boechler	– General Chairman, Edmonton
R. A. Hackl	– Vice-General Chairman, Edmonton
R. S. Thompson	– Vice-General Chairman, Edmonton
W. Franko	– Vice-General Chairman, Edmonton
D. Finnson	– Vice-President, TCRC, Calgary
B. Willows	– General Chairman, Edmonton

AWARD OF THE ARBITRATOR

There are two aspects to the grievance before the Arbitrator. Firstly, the Union alleges that the Company has regulated pools and spareboards in a manner contrary to the intention of the collective agreement, essentially assigning too many employees to the pools and boards, resulting in a significant loss of earnings to the employees affected. Secondly, the Union alleges that the Company has disregarded the work allocation rules intended to govern the ratio of work to be performed by the employees home terminalled at either end of an extended run, again causing an undue loss of

earnings contrary to the agreed intention of the collective agreement which governs operations in Western Canada.

The background to the dispute is instructive to understand the issues and the positions of the parties. In 1992 the Company and the Union agreed to the introduction of Conductor Only operations. With the advent of that development the Company had concern to maintain pools and spareboards in such a manner to adequately service its needs while the Union naturally wanted to avoid the excessive or inflated adjustment of boards in such a way as to reduce the potential earnings of employees, whether on spareboards or in pools. To that end, an agreement was executed on February 10, 1992 which provided as follows:

> During the discussions which culminated in the Memorandum of Agreement dated January 15,1992, the Union expressed concern with respect to board adjustments and the local practices which have developed over a period of time at various terminal governed by Agreement 4.3. In particular, the Union express concern that the company could arbitrarily adjust boards thereby adversely affecting the earnings of employees on spareboards or unassigned pools. The Company expressed a concern that there may not be sufficient employees available to meet the requirements of the service.
>
> Therefore, the parties agreed that the following mileage figures are to be used when adjusting road and joint spareboards or pools on a 7 day basis:
>
> **(a)** Unassigned and assigned pools – 1125 miles
>
> **(b)** All road or Joint spareboards – 1078 miles
>
> The number of employees on the yard spareboard will be regulated between the Local Chairperson and the appropriate officer of the Company each Friday afternoon (or other day as mutually agreed to) to take effect at 0001 hours so that the average earnings of a Yardman will not be less than the equivalent of 5 shifts per 7 day period in the following manner:
>
> Add the total number of spare Yardmen used during the previous 7 days and divide by 5, that is for example:

> 100 spare yard shifts for the 7 day period divided by 5 equals 20 employees on the yard spareboard.

The above two principles were incorporated as Addendum 31D to the collective agreement and subsequently became paragraphs 44.12 for road employees and 90.3 for yard employees within the terms of the collective agreement.

The next significant event giving rise to the present dispute was the introduction of extended runs in 1995. That permitted the operation of trains beyond the confines of a single subdivision, running through intermediate terminals to more distant away-from-home terminals for crews operating extended run trains. It was agreed that extended runs should be operated on a two-week board adjusted basis rather than the traditional one week period contemplated in the original Conductor-Only Agreement. In the result, the terms of the original Addendum 31D were not to apply to trains operating extended runs. As part of the extended runs agreement the parties expressed the following:

> The Company will use traffic forecasts in setting the boards. Boards will be adjusted every 14 days, with advice from the local chairman, so as to enable employees to earn the maximum miles.

The foregoing provision has now been incorporated into the collective agreement as article 44.15.

Article 44 also makes other important provisions with respect to mileage regulations. The monthly limitation on miles is contained in article 44.1 in the following terms:

> **44.1** The mileage for which Train service employees are paid will, as far as practicable, be limited by the Company to the following:

– service paid at passenger rates 6450 miles per month;

– service paid at freight rates 4300 miles per month.

Enforcement of the mileage limitations was incorporated into the provisions of article 44.6 which sets up penalties for exceeding the limits, and reads as follows:

> **44.6** If Train service employees exceed their maximum mileage in any month, such excess mileage will be added to their mileage for the following month except where excess mileage is made because of a shortage of employees at the home terminal. Upon accumulation of maximum mileage, or as soon as possible thereafter, Train service employees will be relieved at the point where relief is normally furnished. Train service employees who exceed the maximum mileage limitation due to incorrect reporting of their mileage will be penalized by the loss of two days for each 100 miles or major portion thereof, made in excess of the maximum.

Significantly, the introduction of extended runs brought into the collective agreement the provisions of article 22.10 which involve a 4,300 mile per month guarantee for employees fully available for work as a conductor. That article reads, in part, as follows:

> **22.10 (a)** Employees assigned to runs identified in article 36.2 or road or joint spareboard at terminals that included extended run territory and who are available for duty for their entire mileage month will be entitled to:
>
> 4300 miles if working as a conductor
>
> Such guarantee will be prorated for each 14 day board adjustment period.

As noted above, the introduction of extended runs raised two issues: firstly the equitable structuring of pools and spareboards so as to allow employees to earn the maximum miles and, secondly, the equitable allocation of work as between crews home-terminalled at either extremity of a segment of extended run territory. These

provisions, which are extremely important to the earnings of employees, are reflected in articles 44.15 and 44.16 of the collective agreement which read, in part, as follows:

44.15 The Company will use traffic forecasts in settling the boards. Boards will be adjusted every 14 days, with advice from the local chairperson, so as to enable employees to earn the maximum miles.

44.16

(a) In the application of paragraph 36.2, the workload between terminals will be divided based on the ratio of subdivision mileages. For this purpose, the subdivision mileages shall be the mileage between the point where road miles commence at the initial terminal and the point where road miles cease at the final terminal prior to the implementation of this Agreement.

Example

Terminal "A" to Terminal "B"	112.8 miles	48%
Terminal "B" to Terminal "C"	124.6 miles	52%
	237.4 miles	100%

(b) During board adjustments, the total miles earned during the checking period coupled with forecasted traffic requirements and employee availability will result in a specific number of employees being required to meet that workload. This total number of employees will be multiplied by the terminal's ratio to determine the number of employees required on the pool at that terminal.

Example

52 employees are required to meet the workload between Terminals "A" and "C".

Terminal "A"	52 employees x 48%	=	25 employees
Terminal "C"	52 employees x 52%	=	27 employees

In the application of this paragraph, the number of employees will be rounded to the nearest number.

NOTE: The workload allocation for crews home terminalled at Rainy River for work between Fort Frances and thunder Bay and Fort Frances and Winnipeg will be determined prior to the implementation of extended runs.

(c) To meet service requirements at a terminal(s), adjacent terminal(s) may increase their complement of employees to satisfy service requirements. As employees become available at the terminal which created the necessity for the adjustment, the board will be adjusted reducing the employees filling the shortage at that location.

Finally, it must be appreciated that the 4,300 mile guarantee found in article 22.10(a) of the collective agreement is a minimum protection, and not a figure reflecting the maximum potential earnings of an employee in a given month. In that regard it is important to recognize that a number of different forms of payments can be earned over and above the minimum guarantee and constitute an important enhancement in the potential earnings of employees. Those payments are obviously not available to employees, however, to the extent that they are not in fact called to work out of a pool or off a spareboard. Article 44.7 makes reference to mileage wages which are not charged against an employee's mileage records, as expressed in the following terms:

> **44.7** In the application of this article mileage paid as:
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> **(a)** General Holiday;
>
> **(b)** Bereavement Leave;
>
> **(c)** Travel Allowance;
>
> **(d)** Annual Vacation;
>
> **(e)** Payment Received Pursuant to articles 124, 125 and 126;
>
> **(f)** Held-Away-From-Home Terminal pursuant to article 34 and Addendum 92;
>
> **(g)** Runaround; and
>
> **(h)** Called and Cancelled;
>
> **(i)** pick up and or set out enroute premiums – Conductor Only;
>
> **(j)** pick up and or set out entire trains enroute;
>
> **(k)** premium for switching own train at initial or final terminal – Conductor Only
>
> Will not be charged against employee's mileage records. However, employees will not be permitted to stipulate the period off duty on account of mileage limitations as their annual vacation period. When the annual vacation date allotted in advance, as provided in article 127, paragraph 127.20 coincides with the time an employee is off duty because of mileage limitations, the date will not be changed and the employee will be allowed to commence vacation on the allotted date.

Counsel for the Union also pointed the Arbitrator to a number of other forms of payment, for example train length and Conductor Only premiums, which can be earned over and above for an employee who in facts earns 4,300 chargeable miles in a given month.

Central to the Union's concern in this grievance is the recognition, agreed to by the parties, within the terms of the collective agreement that spareboards are to be administered and adjusted in such a way as to ensure both sufficient numbers of employees to protect the service and sufficient numbers of work opportunities to allow employees to earn the average of 4,300 miles per mileage month. That is enshrined in the provisions of article 44.14 which states the following:

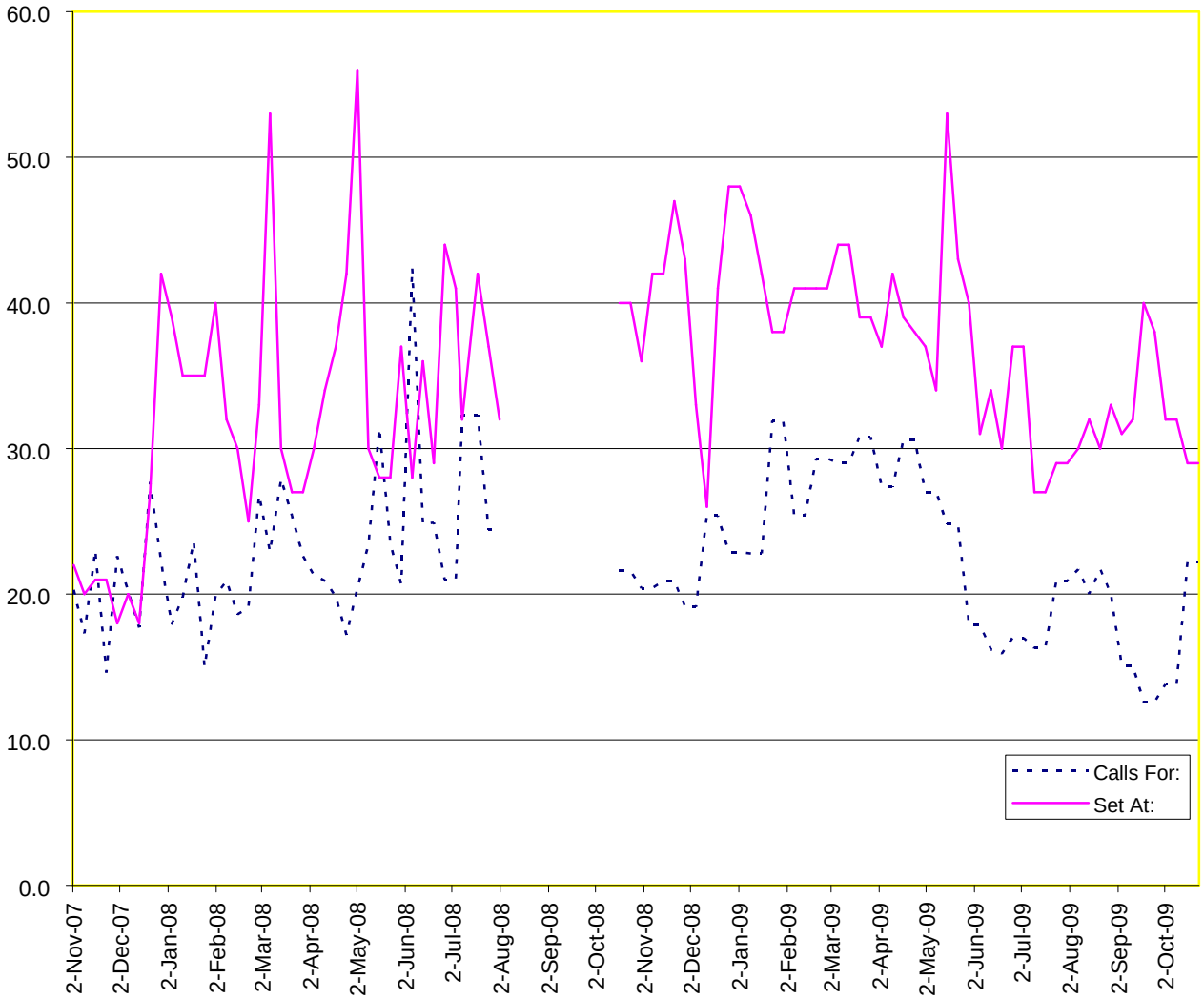
> **44.14** Should it be demonstrated that inequities exist in the adjustment of spareboards, e.g., there are insufficient employees on the spareboard to protect the service or insufficient work is available to allow employees on road or joint spareboards to earn the average of 4,300 miles per mileage month, the Local Chairperson and the appropriate officer of the Company will adjust these spareboards to protect the situation. Should they be unable to agree, the General Chairperson and the Vice-President, or his delegate, will meet on a timely basis to resolve the matter.

The first location which the Union draws to the Arbitrator's attention where it maintains that the Company has failed to administer a spareboard in extended run service in a manner consistent with the collective agreement concerns Kamloops. The Union places data before the Arbitrator concerning board changes in Kamloops for the two year period between November 2, 2007 and October 23, 2009. The Union submits that the following charts and graph readily confirm that the Company has substantially overloaded the boards at Kamloops, to a degree that substantially impacts the potential earnings of employees in extended run service at that home terminal:

Kamloops

Date:	*2-Nov-07*	*9-Nov-07*	*16-Nov-07*	*23-Nov-07*	*30-Nov-07*	*7-Dec-07*	*14-Dec-07*	*21-Dec-07*	*28-Dec-07*
Calls For:	20.3	17.3	23.0	14.6	22.6	20.2	17.7	27.7	22.2
Set At:	22.0	20.0	21.0	21.0	18.0	20.0	18.0	27.0	42.0
Date:	*4-Jan-08*	*11-Jan-08*	*18-Jan-08*	*25-Jan-08*	*1-Feb-08*	*8-Feb-08*	*15-Feb-08*	*22-Feb-08*	*29-Feb-08*
Calls For:	17.9	19.8	23.6	15.0	19.9	20.9	18.6	19.1	26.8
Set At:	39.0	35.0	35.0	35.0	40.0	32.0	30.0	25.0	33.0
Date:	*08-03-07*	*08-03-14*	*08-03-21*	*08-03-28*	*08-04-04*	*08-04-11*	*08-04-18*	*08-04-25*	*08-05-02*
Calls For:	22.9	27.9	25.4	22.6	21.3	20.9	19.8	17.2	20.4
Set At:	53.0	30.0	27.0	27.0	30.0	34.0	37.0	42.0	56.0
Date:	*08-05-09*	*08-05-16*	*08-05-23*	*08-05-30*	*08-06-06*	*08-06-13*	*08-06-20*	*08-06-27*	*08-07-04*
Calls For:	23.4	31.4	23.5	20.7	42.4	24.8	24.9	21.0	21.0
Set At:	30.0	28.0	28.0	37.0	28.0	36.0	29.0	44.0	41.0
Date:	*08-07-08*	*08-07-18*	*08-07-25*	*08-08-01*	*08-08-08*	*08-08-15*	*08-08-22*	*08-08-29*	*08-09-05*
Calls For:	32.3	32.3	24.4	24.4					
Set At:	32.0	42.0	37.0	32.0					
Date:	*08-09-12*	*08-09-19*	*08-09-26*	*08-10-03*	*08-10-10*	*08-10-17*	*08-10-24*	*08-10-31*	*08-11-07*
Calls For:						21.6	21.6	20.4	20.4
Set At:						40.0	40.0	36.0	42.0
Date:	*08-11-14*	*08-11-21*	*08-11-28*	*08-12-05*	*08-12-12*	*08-12-19*	*08-12-26*	*09-01-02*	*09-01-09*
Calls For:	20.9	20.9	19.1	19.1	25.4	25.4	22.9	22.9	22.8
Set At:	42.0	47.0	43.0	33.0	26.0	41.0	48.0	48.0	46.0
Date:	*09-01-16*	*09-01-23*	*09-01-30*	*09-02-06*	*09-02-13*	*09-02-20*	*09-02-27*	*09-03-06*	*09-03-13*
Calls For:	22.8	31.9	31.9	25.4	25.4	29.3	29.3	29.0	29.0
Set At:	42.0	38.0	38.0	41.0	41.0	41.0	41.0	44.0	44.0
Date:	*09-03-20*	*09-03-27*	*09-04-03*	*09-04-10*	*09-04-17*	*09-04-24*	*09-05-01*	*09-05-08*	*09-05-15*
Calls For:	30.8	30.8	27.4	27.4	30.6	30.6	27.0	27.0	24.8
Set At:	39.0	39.0	37.0	42.0	39.0	38.0	37.0	34.0	53.0
Date:	*09-05-22*	*09-05-29*	*09-06-05*	*09-06-12*	*09-06-19*	*09-06-26*	*09-07-03*	*09-07-10*	*09-07-17*
Calls For:	24.8	17.9	17.9	16.2	15.9	17.0	17.0	16.3	16.3
Set At:	43.0	40.0	31.0	34.0	30.0	37.0	37.0	27.0	27.0
Date:	*09-07-24*	*09-07-31*	*09-08-07*	*09-08-14*	*09-08-21*	*09-08-28*	*09-09-04*	*09-09-11*	*09-09-18*
Calls For:	20.9	20.9	21.7	20.0	21.7	20.0	15.1	15.1	12.6
Set At:	29.0	29.0	30.0	32.0	30.0	33.0	31.0	32.0	40.0
Date:	*09-09-25*	*09-10-02*	*09-10-09*	*09-10-16*	*09-10-23*				
Calls For:	12.6	13.8	13.8	22.2	22.2				
Set At:	38.0	32.0	32.0	29.0	29.0				

Kamloops Spareboard



***No data available August - October 2008.**

The Union submits that the numbers in respect of Kamloops speak for themselves and confirm that employees have been seriously deprived of potential earnings at that location. Its counsel also notes that some yard engine assignments have been cancelled in Kamloops, resulting in employees being called for yard service off the spareboard on a relatively regular basis. He submits that the resulting potential of

employees being called for extra yard assignments effectively removes them from the working board and reduces their potential for earnings, as contrasted with what might occur in the event of a regular yard assignment. In the result, according to the Union, it is not uncommon for employees to remain on the spareboard without assignment or call for periods of up to two to three days. The Union also submits that there was no significant problem with respect to spareboard regulation at Kamloops from the inception of extended runs in 1995 until late in 2007 when the substantial discrepancies in employees called for and actually assigned to the boards began to manifest itself.

The Union next addresses the problem of the Edmonton Yard Spareboard, dealt with under the terms of article 90 of the collective agreement. Again it maintains that there has been an unacceptable departure from the standards of the collective agreement which are intended, in accordance with article 90.3, to ensure "… that the average earnings of a yardman will not be less than the equivalent of 5 shifts per 7-day period …". Reference is also made to article 90.6 which provides as follows:

> **90.6** Should it be demonstrated that inequities exist in the adjustment of spareboards, e.g., there are insufficient employees on the spareboard to protect the service or insufficient work is available to allow employees on yard spareboards an average level of salary that equates to 5 shifts per 7-day period, the Local Chairperson and the appropriate officer of the Company will adjust these spareboards to protect the situation. Should they be unable to agree, the General Chairperson and the Vice-President, or his delegate, will meet on a timely basis to resolve the matter.

By way of example, the Arbitrator is advised by the Union that on a number of occasions the board at Edmonton was set to more than double the number called for. By way of example, reference is made to the week of April 17, 2009 when the yard

spareboard at Edmonton called for 8.6 people and was set by the Company at 25 employees. By the Union's calculation that equated to one shift per week for the twenty-five people assigned to the board, and a substantial reduction in their actual earnings. The Union submits that these facts have impacts beyond the earning of wages, impacting as they do the ability of employees to earn full pension credits for a given months as well as the calculation of an employees E.I. insurable earnings, resulting in a denial of maximum EI benefits.

The Union next addresses Saskatoon which has a joint spareboard protecting both yard and road work. Being a single subdivision terminal, that spareboard is adjusted on a weekly basis, being regulated to 1,078 miles.

Counsel for the Union submits that there is no guarantee for the spareboard employees at Saskatoon, as they do not operate in extended run service contemplated within article 22.10 of the collective agreement nor in regular assignments for which various guarantees are provided under the terms of articles 22.2, 22.3 and 22.4. He notes that the situation has deteriorated to the point that since December of 2007 the average requirement for the spareboard in Saskatoon has been 6.7 employees whereas the board has been set, on average, at 9.8 employees. He notes that that results in an excessive loss of work opportunities for employees, characterized as a 30% cut in pay to all employees on the spareboard. By way of dramatic illustration, he notes that in the case on one employee the radical reduction of work available to him caused him to have fewer than ten tours of duty over the thirty calendar days immediately preceding a

general holiday, as a result of which he failed to qualify for the statutory holiday pay provided under the terms of article 128.2 of the collective agreement.

Finally, the Union addresses the separate issue of workload allocation. In that regard its focus is the allocation of work as between the crews home terminalled at Melville and Biggar operating in extended run service over the Watrous Subdivision. In accordance with the terms of the collective agreement Melville crews are entitled to 52% of the work over the territory while Biggar crews are to have the remaining 48%. The Union notes that a survey of twenty-eight bi-weekly periods between September 19, 2008 and October 15, 2009 reveals only five periods of the twenty-eight where the ratio of 52% to 48% was properly respected. While the Union concedes that for some of the time, notably November 14, 2008 to March 19, 2009, the allocations were close, there were significant stretches of time where that was not the case. By way of example for the close to two month period between September 19, and November 13, 2008, the Melville Terminal was in fact assigned 8.5% less than its proper entitlement, or thirty-five less trains. According to the Union, over the entire survey period Melville crews effectively lost the ability to operate some eighty-three trains, work which its counsel submits represents a loss of some $100,000 in wages to employees at that terminal.

The fundamental response of the Company is that the collective agreement does give it the discretion to manage operations in such a way as to maximize service to its customers, taking into account such elements as traffic forecasts and train delays, a factor which he submits is substantially impacted by the availability of employees. The

Company's representative maintains that what it has done is in keeping with the provisions of the collective agreement, with a view to sustaining sufficient and on time operations to ensure that it can maintain and grow its business.

With respect to extended run territory, the Company's spokesman questions whether the Union is not in fact attempting to gain through arbitration something which it did not achieve at the bargaining table. He stresses that the parties agreed to the 4,300 mile guarantee as a protection for the employees against the variables that can in fact impact on the amount of work which they do. In his submission, what the Union in effect seeks to achieve in the instant grievance is to increase the guarantee by those over and above payments which would be available to employees who maximize their miles on a monthly basis, so that the real guarantee is in effect considerably more.

With respect to single subdivision operations the Company notes that the provisions of article 44 are fashioned in such a way that anticipates that there will be inevitable exceptions and inequities that will need to be addressed, as is evident from the terms of article 44.14 of the collective agreement. The mechanism for resolving those exceptions and inequities is the discussion between the local chairperson and appropriate Company officer contemplated for the purposes of adjusting the working boards.

In support of the process of consultation the examples of Regina, Terrace and Kenora are put forward as representing equitably administered spareboards in single

subdivision service between October 3 of 2008 and February 13, of 2009. Its spokesman submits that the delays and unreliability of train service by reason of manpower shortages is a legitimate factor to be taken into account when adjusting the working boards. He also notes that factors such as PLDs, EOs, Union business and the amount of rest which an employee may choose to take can impact his or her earnings potential. In that regard, he submits that there can be no absolute entitlement that every employee must earn to the level of 1,125 miles or 1,078 miles in each and every week.

In summary, the Company maintains that the negotiation of the 4,300 mile guarantee was negotiated in exchange for the right of the Company to adjust the working boards in such a manner as to protect efficient service. On that basis it maintains that no violation of the collective agreement is disclosed.

I turn to consider the merits of the parties' submissions. Starting with first principles, the Arbitrator has some difficulty with the Company's view of the bargain which the parties made with respect to extended run service and the operation of pools and spareboards in relation to that service. The implementation of extended runs in 1995 obviously gained to the Company important efficiencies and productivity gains. In exchange for that, assurances were provided to the Union with respect to both the guaranteed minimum earnings and, implicitly, the actual earned wages of the employees affected by the change. That is clearly reflected in a Questions & Answers document which was provided to employees during the course of a joint "road show" presentation to employees at the time of the introduction of the Extended Run

Memorandum of Agreement of May 5, 1995. Questions and answer 9 of that agreement reads as follows:

> **Q.** How will boards be adjusted with respect to mileage regulations?
>
> **A.** Boards will be adjusted to enable an employee to earn the maximum miles over the full mileage month.

In the Arbitrator's view the foregoing question and answer cannot easily be squared with the position now advanced by the Company, which effectively submits that there can be no complaint about board adjustments to the extent that all employees are entitled to the minimum guarantee of 4,300 miles per month. As should be evident, the mutual intention of the parties has been that boards are to be adjusted, in the words of article 44.15 of the collective agreement "… so as to enable employees to earn the maximum miles." There is an obvious distinction between not working and receiving a guarantee on the one hand and earning the maximum miles on the other. The interpretation of these provisions advanced in this grievance by the Company effectively reduces the undertaking to enable employees earn the maximum miles to a near meaningless point, supposedly by reason of the existence of the minimum guarantee. That, in the Arbitrator's view, is simply not sustained by a review of the provisions of article 44 of the collective agreement.

As is evident from the material before the Arbitrator there are locations at which there has been no discernible problem as spareboards have been administered in a manner consistent with the manpower required. That is clearly the case with the examples of a number of terminals reviewed in the materials of the Company. It is not, however, apparent in the problem locations which have prompted the Union's concerns.

Very simply, the Arbitrator finds it difficult to reconcile the discrepancy between the employees called for on the spareboard at Kamloops, for example, and the number of employees placed on the board by the Company. For example, on April 25, 2008 the collective agreement formula called for 17.2 employees to be on the spareboard when in fact the Company placed 42 employees on the board, clearly having an adverse impact on the potential earnings of the employees in question in a manner which is difficult to reconcile with a good faith attempt to regulate the board "… so as to enable employees to earn the maximum miles." I am satisfied that the same facts are disclosed with respect to the Edmonton Yard spareboard and the joint spareboard at Saskatoon. In the result, it must be concluded that the Company has not administered the provisions of article 44 in a way consistent with its obligation to enable employees to earn the maximum miles.

The foregoing conclusion is not to say that the Company cannot take into account such factors as forecasted traffic requirements and employee availability for the separate question of workload allocation between separate terminals, as expressly contemplated under article 44.16 of the collective agreement. The work allocation exercise, however, cannot operate to effectively override the more fundamental obligation enshrined in article 44.15 in the primary exercise of setting the boards for extended runs. While under that article traffic forecasts are also relevant, the obligation remains that the boards must be set so as to enable employees to earn the maximum miles.

With respect to single subdivision terminals the Arbitrator is left with some uncertainty regarding the Company's submission to the effect that article 22.4 provides a monetary guarantee for working spareboards. The language of article 22 does speak in terms of guarantees for road service, indeed that is the title of article 22. However when regard is had to the provisions of article 22, article 22.2 speaks of employees "regularly assigned to road switcher service", while article 22.3 refers to employees "regularly assigned to mixed and way freight road service" and article 22.4 addressed "train service employees in through freight train service regularly set up …". Given the important distinction between regular and spare service, the Arbitrator is left in some difficulty as to the correctness of the Company's submission and is compelled to prefer the presentation of the Union which appears to acknowledge that there is no guarantee available to spareboard employees in single subdivision service.

With respect to the issue of work allocation the Arbitrator must also conclude that the grievance is well founded. Even allowing for a 2% margin of error, when regard is had to the period surveyed with respect to the allocation of work between Melville and Biggar, with Melville being entitled to 52% of the work over the Watrous Subdivision in extended run service, and Biggar entitled to 48%, fully one-half of the examples provided reveal a relatively lopsided advantage in favour of Biggar, the general effect of which amounts to a reversal of the ratio at least half of the time. That, in the Arbitrator's view, cannot be squared with the requirements of the work allocation provisions fashioned by the parties within the terms of article 44.16 of the collective agreement.

For all of the foregoing reasons the Arbitrator concludes and declares that the Company did violate the provisions of article 44 of the collective agreement with respect to the management of spareboards at Kamloops, Edmonton Yard and Saskatoon. It also violated the work allocation provisions of article 44.16 with respect to the allocation of work as between Melville and Biggar on the Watrous Subdivision.

The Arbitrator directs that the Company cease and desist from the violations disclosed in this award. Further, with respect to the request by the Union for a direction that the Arbitrator orders the Company to compensate employees who were adversely affected by the violations of the collective agreement, I deem it more appropriate at this time to remit the matter to the parties to determine the appropriate quantity of relief which might be payable in respect of the specific violations found within this award. To that end the Company is directed to establish a joint committee of Company and Union representatives, with no more than two representatives from each side, with the Union's representatives to be compensated for any time and expenses relating to the work of the committee. Should the parties be unable to agree on the ultimate remedial measures, the matter may be further spoken to.

November 27, 2009

(original signed by) MICHEL G. PICHER
ARBITRATOR